Court No.2

Civil Writ Petition No. 7303 (S/S) of 2001.

Ordnance Factory Cooperative Credit Society Ltd., Raipur, Dehradun	……..	Petitioner
	Versus	
Presiding Officer, Labour Court & Another	……..	Respondents

……..

Hon. P.C. Verma,J.

The petitioner has filed this petition under Article 226 and 227 of the Constitution of India challenging the judgment and award dated 14.03.2001, passed by the Presiding Officer, Labour Court, Dehradun in Industrial Dispute No. 124 of 2000. The Labour Court by its impugned judgment and award held that the punishment of termination of Sunil Kumar Gupta-respondent No.2 form 30.10.1981 was improper and illegal and directed the petitioner to reinstate him in the service but keeping in view the delay in filing the reference, the Labour Court did not award back wages to the workman and in lieu of this awarded Rs. 10,000/- as compensation and Rs. 1000/- as litigation expenses.

The brief facts of the writ petition are that the respondent No.2 was appointed on ½.8.1977 as Junior Clerk by the petitioner-Society and on 16.6.1989 he was promoted to the post of Accountant. The services of the respondent No.2 were terminated on 30.10.1981. Against the order of 30.10.1981 the respondent No.2 filed a Civil Suit for declaration and reinstatement and realization of pay and damages in the court of Civil Judge (Senior Division), Dehradun. The said suit was dismissed on 13.9.1999 against which the respondent No,.2 preferred an appeal. The appellate Court allowed the appeal and remanded the case to the trial court for fresh decision in view of observation made in the judgment. In the meantime the respondent No.2 preferred the matter to the Conciliation Officer who referred the matter to the Labour Court on the basis of which Industrial Dispute No. 124 of 2000 was registered.

The petitioner earlier filed a writ petition bearing No. 1009 (S/S) of 2001 challenging the proceedings before the Conciliation Officer under the U.P. Industrial Disputes Act on the grounds (a) that in view of the provisions of Section 135 of U.P. Co-operative Societies Act, the dispute could not be raised under Sec. 2-A of the U.P. Industrial Disputes Act as by virtue of this Section the application of U.P. Industrial Disputes Act is excluded. The second ground of challenge of the petitioner is (b) that dispute, if any, between the Co-operative Society and its employees can be settled under Section 70 of the U.P. Co-operative Societies Act. Therefore, the proceeding initiated by Conciliation Officer was barred, as remedy was available under the Uttar Pradesh Co-operative Societies Act itself.

Both these grounds of challenge have been discussed in detail and rejected by this Court in the aforesaid writ petition which has been dismissed on 07.05.2001, contained in Annexure No.2 to this writ petition.

Learned counsel for the petitioner submitted that the reference was highly belated. Therefore, the reference could not have been entertained by the Labour Court. The Uttar Pradesh Industrial Disputes Act does not prescribe any limitation for making a reference. However, explanation has come from workman that on the basis of a wrong advice he filed a civil suit and when a proper advice was given to him he requested for a reference and considering this reason for the delay the State Government made the reference. Therefore, the argument of the petitioner is without force.

Learned counsel for the petitioner further submitted that the matter could not be referred to the Labour Court if the same is pending for adjudication before the Civil Court. The argument of the learned counsel for the petitioner is misconceived. In the case of Premier Automobiles

Ltd. versus Kamlekar Shantaram Wadke, reported in A.I.R. 1975, Supreme Court, page 2238 the apex Court has categorically held that the relief sought under the Labour Law can be adjudicated by the Labour Court.

Learned counsel for the petitioner submitted that the respondent could not be held to be workman as he was drawing more than Rs.500/- per month and, therefore, stood exempted in the category under Clause (iv) of Section 2 (z) of the U.P. Industrial Disputes Act. The learned counsel for the respondent submitted that the ordnance Factory is owned by the Government of India and under the Central Act, the employees drawing the wages up to Rs. 1600/- per month they come within the category of workmen under Section 2 (s) of the Industrial Disputes Act. There being a repugnancy in the pay scale clarifying the workman in both the Acts. In view of Article 254 of the Constitution where there is repugnancy between Central Act and State Act the Central Ach shall prevail. Therefore, the respondent was rightly held to be a workman.

In view of above discussions, the Labour Court rightly set aside the termination of the respondent No.2 without back wages and rightly awarded Rs. 10,000/- as compensation and Rs. 1000/- as litigation expenses. The impugned order does not call for any interference under Article 227 of the Constitution.

The petition has no merit and is dismissed. No order as to costs.

(P.C. Verma, J.)

25.9.2002
P. Singh